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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,595	12/11/2001	Makoto Tabata	482842000500	4248
25227	7590	07/22/2005		
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 300 MCLEAN, VA 22102			EXAMINER VERBITSKY, GAIL KAPLAN	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/009,595

**Applicant(s)**TABATA ET AL. **Examiner**

Gail Verbitsky

**Art Unit**

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05/04/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4,8 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4,8 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/27/2004
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: two attachments.

## DETAILED ACTION

### *Claim Objections*

1. Claims 4, 23-24 are objected to because of the following informalities:

Claim 4: Perhaps applicant should delete lines 6-8 beginning with "the main body" replace them with --the main body comprises at least one indicator for allowing the user to recognize and use of a plurality of different methods of holding the main body, the plurality of different methods differ from each other according to the direction in which the probe is to be inserted into the external auditory canal of the person whose temperature is to be measured, and--, in order to clearly describe the invention.

Claim 8: Perhaps applicant should insert --and use-- after "recognize" in line 2, in order to clearly describe the invention.

Claim 23:

A) perhaps applicant should replace "an indicator surface" in line 4 with --an indicator member surface--, in order to clearly describe the invention.

B) perhaps applicant should replace "which differ" in line 6 with --, the plurality of different methods differ from each other--, in order to clearly describe the invention.

C) perhaps applicant should insert --and use-- after "to recognize" in line 6, in order to clearly describe the invention.

D) perhaps applicant should replace "indicator surface" in line 9 with --indicator member-- or with --indicator member surface--, in order to clearly describe the invention.

Claim 24:

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A) perhaps applicant should replace "an indicator surface" in line 5 with –an indicator member surface–, in order to clearly describe the invention.

B) perhaps applicant should insert –and use— after "to recognize" in line 5, in order to clearly describe the invention.

C) perhaps applicant should replace "indicator surface" in line 8 with –indicator member—or with –indicator member surface--, in order to clearly describe the invention. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4, 8, 23-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In this case, the term "recognize" makes the claim language confusing because it is not clear what particular action in taking the temperature measurements has been done. Perhaps applicant should make changes suggested by the examiner in paragraph 1, in order to clearly describe the invention. Claim 25 is rejected by virtue of its dependency on claim 24.

### ***Allowable Subject Matter***

5. Claims 4, 8, 23-25 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

### ***Conclusion***

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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

WO 99/04230 [hereinafter Konno] **Konno** discloses in Figs. 2 and 7-9, 11 an ear thermometer comprising a main body configured to be held by an operator, a probe attached to the main body and protruding from it and configured to be inserted into an ear canal of a patient, a start measuring switch (indicator surface) 4 located on a substantially curved second side B opposite to a first side A. If to draw a plane C (reference plane) dividing the device into two symmetrical parts, the plane C will include a center axis D of the probe and also be a center of symmetry of the curved side wherein the curved surface of the curved side will be substantially constant along the length of the plane and perpendicular to the plane C. A center F of the curved surface is in the vicinity of a base G of the probe (see attachment to the previous Office actions).

It is inherent, as understandable from the figures, that the operator can move his /her hand along the curved surface of the body of the thermometer which serves as an indicator surface because it allows the operator to **chose (recognize)** a comfortable position out of a plurality holding positions differing according to a direction in which the probe is being inserted (and the position of the patient, i.e., sitting, prone, supine, etc.) and depending on it, the operator moves/ slides his/ her hand along the surface of the body of the thermometer (indicator surface).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

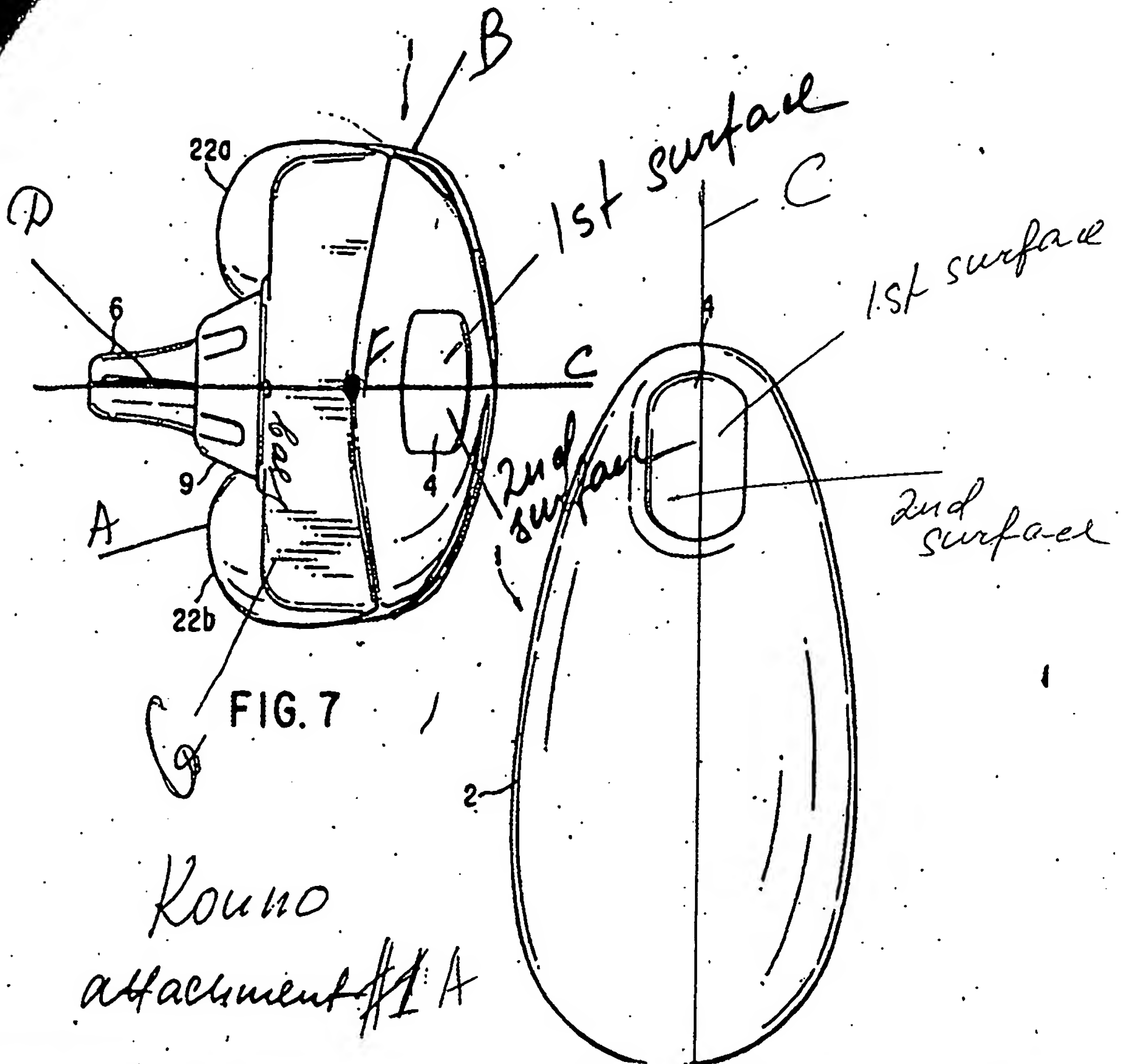
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

  
Gail Verbitsky  
Primary Patent Examiner, TC 2800

July 21, 2005



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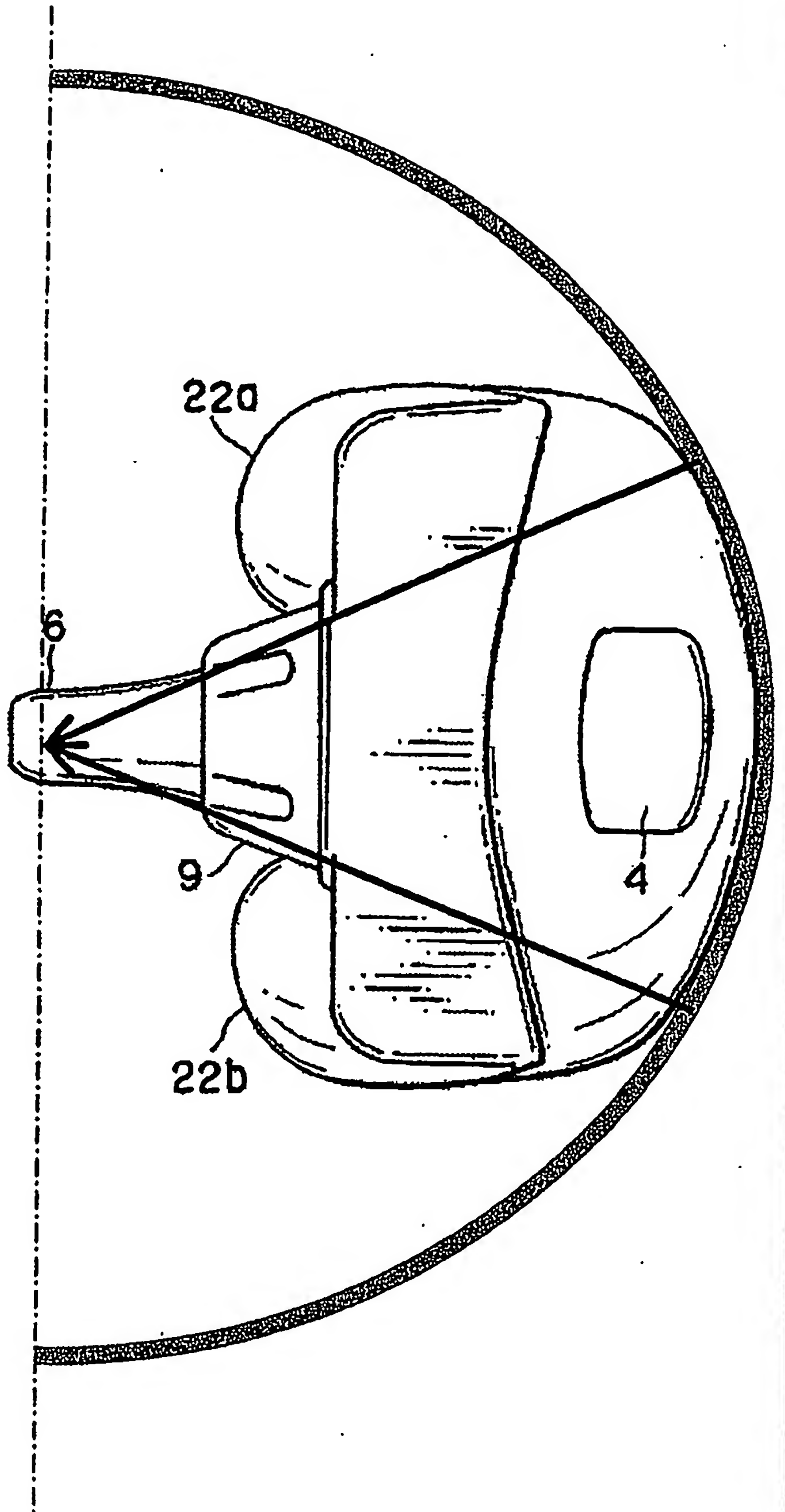


FIG. A